



Livestock Facility Siting Review Board

Meeting Minutes

Livestock Facility Siting Review Board Meeting
State of Wisconsin

10:00 AM

October 20, 2017

Department of Agriculture, Trade and Consumer Protection (DATCP)
Board Room
2811 Agriculture Drive
Madison, WI

CALL TO ORDER— Bob Topel, LFSRB Chair

The meeting was called to order by Chairman Bob Topel at 10:00 a.m. Topel, Raymond Diederich, Lee Engelbrecht, Dr. Jerome Gaska, Scott Sand, Bob Selk, and Scott Godfrey were in attendance. Others present included LFSRB Attorney Cheryl Daniels and DATCP Division of Agricultural Resource Management employees, Richard Castelnovo and Chris Clayton.

Daniels confirmed that the meeting was publicly noticed as required.

Daniels called roll, confirming that all LFSRB members were present.

Engelbrecht moved to approve the agenda as presented, Diederich seconded, and the motion carried.

Diederich moved to approve the March 31, 2017 minutes as prepared, Engelbrecht seconded, and the motion carried with an abstention from Godfrey.

Bonneville, et. al., v. Shawano County, Docket No. 17-LFSRB-01 – Cheryl Daniels, Board Attorney

Daniels provided background information on the request for appeals. The attorney for the appellants submitted two requests for review. The first request named the Town of Almon as the local permitting authority, which was incorrect, and the second request named Shawano County, which was correct. Two aggrieved persons, neighbors of the applicant livestock facility, submitted statements of position. The applicant livestock facility, through its attorney, also submitted a position statement. Shawano County did not submit a statement of position.

Daniels clarified the case review process under Wis. Stat. § 93.90(5) (c). The LFSRB agreed to identify the issues and deliberate during open session, after discussing its option to enter into closed session as part of its deliberation.

The LFSRB addressed the following issues raised by the appeal including those specifically asserted by the aggrieved parties in their request for review:



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1. The request for review challenged the procedures followed by Shawano County, the decision-making authority in this case, to receive a recommendation from the Town of Almon on whether to grant the conditional use permit. The following considerations were presented:
 - a. The town's input is not required by ATCP 51 nor the county's ordinance.
 - b. The extent to which the LFSRB's review should focus on whether the local permitting authority followed proper procedures (In this case, the evidence in the record showed the county complied with all notice and process requirements)
 - c. The degree to which the county relied on town input in arriving at its decision to approve the siting permit. In this regard, the LFSRB noted:
 - i. A condition placed on the permit, that the applicant get all town permits, showed reliance on the town's input.
 - ii. Seeking the town's input did not delay the county's process beyond the time allowed
 - iii. The issuing authority cannot place conditions on the permit for another local government, and in this case, the LFSRB found no evidence that the county did so for the town.
2. The request for review contended that the livestock facility was in violation of its WPDES / CAFO permit due to a discharge, and therefore, the facility could not have met the runoff management standard in ATCP 51. The LFSRB considered the following:
 - a. The livestock facility's engineer signed off on Worksheet 5 (runoff management) in the livestock siting application documenting compliance with ATCP 51.
 - b. There was inconclusive evidence in the record to show a significant discharge (which is the applicable standard in ATCP 51) from the facility. The record showed that the applicant installed a temporary fix to address the discharge (no discharge is the applicable standard for WPDES / CAFO permits) and is working on plans to install a permanent fix. The Board questioned whether the application was complete because it did not include construction plans for the future, permanent fix.
3. The record showed that the county improperly determined the livestock facility's application was complete. The LFSRB found no plans and specifications in the record for the proposed waste storage structures, yet the county's completeness determination checklist indicated that the county reviewed the applicable plans and specifications.
4. Shawano County improperly placed conditions on the decision approving the application for a siting permit (page 350 in the record). Related to this issue was the fact that beforehand, Shawano County did not have all the information required for a complete siting applicant when it determined that the application was complete. In the case of the engineering plans for storage facilities, the county authorized a "plan for a plan." The LFSRB discussed that livestock siting operates under a presumption of compliance, which cannot be triggered unless a complete application is submitted. In reviewing each condition, the LFSRB considered the following:
 - a. By linking a manure storage permit to the siting permit in its ordinance, Shawano County improperly created an additional standard that applied to livestock facilities seeking a siting



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- permit. Shawano County cannot make obtaining another permit a condition of approval for a siting permit
- b. Any issue keeping the applicant from meeting the property line setback requirements should have been addressed prior to a completeness determination.
 - c. The siting permit cannot be conditioned on having or maintaining compliance with a DNR permit.
 - d. The siting permit cannot be conditioned on having or maintaining compliance with a WPDES / CAFO permit.
 - e. The siting permit cannot be conditioned on having or maintaining compliance with permits issued by the Town of Almon.
 - f. A cap on animal units is not a condition; instead, it is a statement of what is already determined by issuing the siting permit.
 - g. Requiring that expansion include facilities listed in the application is not a condition; instead, it is a statement of what is already determined by issuing the siting permit.
 - h. Engineering designs for new or substantially altered waste storage facilities and waste transfer systems need to be addressed as part of the siting application, prior to a completeness determination.
5. Shawano County did not issue a decision with findings of fact supported by evidence on the record. The LFSRB observed that Shawano County should rectify this by issuing future decisions with findings of fact, as required by the siting law.
6. The LFSRB questioned whether the correct decision-making authority, as stated in Shawano County's ordinance (the Shawano County Conservationist or his/her designees), granted the siting permit. The LFSRB found that the Land Conservation Committee granted the siting permit, yet the county's ordinance states that the Land Conservation Committee shall take local appeals by any person aggrieved or affected by any decision of the County Conservationist or his/her designees. The Board agreed to communicate this issue to the county and request that the county clarify county permitting roles in their ordinance, if necessary.
7. The LFSRB questioned whether Shawano County's ordinance was properly adopted to issue conditional use permits.

As part of their deliberation on the issues, LFSRB members discussed the scope of their review and the bounds of their authority. They discussed the LFSRB's authority to weigh in on the ordinances of local permitting authorities. Daniels reminded the members that the Wisconsin Supreme Court affirmed the LFSRB's authority to consider and approve individual conditions placed on a siting permit.

The LFSRB reached the following conclusions, which were recited by Daniels:

- The livestock siting law does not allow a local government to meld ordinances relating to livestock siting and manure storage / animal waste.



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- Shawano County's livestock siting ordinance should clarify decision-making authorities for granting and appealing a siting permit.
- As required by the livestock siting law, findings of fact must be included in a county's decision to approve a condition use permit for livestock facilities.
- Shawano County did comply with all notice requirements; therefore, the appeal on this issue fails.
- As to the question of process used by the Town of Almon in making its recommendations, the LFSRB does not have the authority to review this issue because the town is not the local permitting authority.
- As to Shawano County's reliance on the town's recommendation, the LFSRB finds that as long as it is clear that a town's role is advisory only, does not delay a county's decision-making process, and does not attach any conditions requested by a town, a county is free to ask the opinion of the town and other local governments.
- Without clear and convincing evidence in the record to show a significant discharge, the applicable standard in ATCP 51, the LFSRB cannot make the determination that the facility did not meet the runoff management standard in ATCP 51. Although the applicant, on the record, discussed both a temporary fix to a discharge in violation of the facility's WPDES / CAFO permit, and a future, permanent fix, the LFSRB defers to the county's completeness review of information provided in the application meeting the runoff management standard in ATCP 51.
- As to Shawano County's determination that the application was complete and attaching eight additional conditions (page 350 in the record):
 - Condition 1, stating "Prior to the start of construction activities a Livestock Waste Management Permit must be obtained from the County Land Conservation Department.", cannot stand because it creates an additional standard that is not allowed under the siting law.
 - The information needed to resolve Condition 2, stating "Prior to obtaining a Livestock Waste Management Permit parcels need to be in common ownership to resolve a property line setback." should have been included with the application before the County could correctly determine it complete.
 - Condition 3, stating "Owner must obtain all required WI DNR permits including erosion control.", cannot stand because it creates an additional standard that is not allowed under the siting law.
 - Condition 4, stating "Owner must obtain and/or maintain all required WI DNR permits, including WPDES." cannot stand because it creates an additional standard that is not allowed under the siting law.



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- Condition 5, stating “Owner must obtain all required Town of Almon permits.” cannot stand because it creates an additional standard that is not allowed under the siting law.
- Condition 6, stating “Up to 13,000 animal units are approved as detailed in the submitted ATCP 51 Livestock Facility Siting application.” and Condition 7, “Expansion includes all facilities as detailed in the submitted ATCP 51 Livestock Facility.”, should not be stated as conditions because these are components of the application that was approved by the County.
- The information needed to resolve Condition 8, “New or substantially altered waste storage facilities and waste transfer systems must comply with USDA-NRCS Technical Guide Standards. Approved engineering designs must be submitted prior to issuing a Livestock Waste Management Permit.”, should have been included with the application before the County could correctly determine the application was complete.

The LFSRB members voted to affirm their conclusions and direct LFSRB Attorney Daniels to memorialize them in a draft final decision. Gaska moved to approve the summary of conclusions as recited by Daniels, Diederich seconded, and the motion carried.

SET DATE FOR TELEPHONIC BOARD MEETING TO REVIEW DRAFT AND VOTE ON FINAL DECISION – Cheryl Daniels, Board Attorney

The LFSRB agreed to convene a meeting by telephone conference call on Friday, November 10, 2017, at noon, to review the draft decision and vote on a final decision.

DATCP staff reported on an upcoming Board case involving the approval of an expanding livestock facility by Walworth County. Daniels and the LFSRB members tentatively scheduled an in-person meeting to hear the case on January 5, 2018.

ADJOURN

Godfrey moved to adjourn the meeting, Engelbrecht seconded, and the meeting was adjourned at 1:15 p.m.

Bob Selk, Secretary

Date

Recorder: CC